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EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS: NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ENG

Effective Functioning of National Human Rights Institutions in Asia

1. There are some fundamental problems affecting national human rights institutions in Asia which need to be addressed if these bodies are to be effective and win the confidence of the people in their respective countries. In some countries in Asia the juridical framework has collapsed, as for example in Pakistan since the military takeover. In others very serious obstacles are made to its functioning, as for example in Malaysia, Singapore, Indonesia, Bangladesh, Nepal, Cambodia and Sri Lanka. In a few places the juridical framework is only in its initial stages, as in China and Vietnam. National human rights institutions must therefore be seen in the light of the juridical framework in their respective locales.

2. National human rights institutions cannot substitute for the normal functioning of the juridical system of a country as envisaged by the International Covenant on Civil and Political Rights (ICCPR). The components of a juridical system are a police system, a prosecution system and a judicial system. These interrelated bodies are the primary agents for the protection of the people from violations of human rights and fundamental freedoms. Where impunity prevails due to an ineffective juridical framework, a national human rights institution trying to act as a substitute and provide redress is engaging in an impossible task. It is also doing the flawed juridical system a favour, by saving it from domestic and international criticism. Thus instead of dealing with the problems of the juridical system, attention is misdirected towards the national human rights institution—which even if functioning perfectly could not undertake the role of a proper juridical system. Under any circumstances, when a juridical system is fundamentally flawed national human rights institutions cannot do their work effectively, except in peripheral areas.

3. The Asian Legal Resource Centre believes that in countries where the basic juridical framework is seriously flawed the efforts of national human rights institutions should be directed towards drawing the attention of the state to that condition with a view to reform. For example, where criminal investigations fail to adequately address large-scale concerns such as extrajudicial killings, disappearances and torture, national human rights institutions must expose the incapacity of the juridical system to deal with these violations and make the public aware of recommendations for remedies. If instead of doing this national human rights institutions try to undertake the functions normally reserved for institutions of administration of justice the scope of their activities will soon be so vast as to completely exhaust their resources and power. A national human rights institution is not a law enforcement agency, nor is it a part of the judiciary. Therefore the very idea of it taking over the functions of these institutions conflicts with its actual function as a monitoring body over the system of administration of justice. If by contrast the monitoring function is properly developed and carried out the institution can do an enormous service in promoting and protecting human rights.

4. The Asian Legal Resource Centre has observed that where national human rights institutions conduct inquiries into torture, these often end in financial settlements. Torture is a serious crime and systemic torture is a crime against humanity. It is difficult to comprehend the principles that allow these cases to be settled by monetary payment. That the payments themselves are low is beside the point. If acts of torture are prosecuted under the normal laws within a country the punishment is likely to be much higher and its deterrent effect on law enforcement agencies would be greater. Where the Convention against Torture is not yet part of domestic law, as in India, national human rights institutions should exercise pressure for its ratification and incorporation into domestic law.

5. National human rights institutions in many Asian countries have done a useful service in visiting persons under arrest and documenting their cases towards the prevention of torture. Facilities for local officers of national human rights institutions should be improved to allow them to engage in direct intervention of this sort.

6. National human rights institutions also need to improve facilities for urgent communications by victims. In some countries functioning 24-hour telephone hotlines have been developed. Given the rapid pace of electronic communication systems, national human rights institutions can improve their capacity for dealing with violations within a short time, and thus protect the rights of people—particularly from extrajudicial killings, disappearances and torture.

7. Officers of national human rights institutions working in more difficult regions, such as those facing civil strife, are subject to many obstacles in undertaking their tasks. National human rights institutions should negotiate greater protection for their staff and other human rights groups working in such situations.

8. National human rights institutions in Asia can serve a great educational function if communication facilities available to the state—such as newspapers, radio and television—are used creatively and effectively for this purpose. To that end, national human rights institutions should develop their own media and education units. Human rights education in schools and higher education institutions can also be improved through the intervention of national human rights institutions.